

No. 11978

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

WILLIAM D. NOLAND, Trustee, and WILLIAM D. NOLAND, Personal,

*Appellants,*

*vs.*

HARRY C. WESTOVER, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; GEORGE D. MARTIN, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; NORMAN HAYWARD, Internal Revenue Agent, Los Angeles, California; RAYMOND B. SULLIVAN, Acting Internal Revenue Agent, Los Angeles, California; and JOHN H. CRAMER, Internal Revenue Agent, Los Angeles, California,

*Appellees.*

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## BRIEF OF APPELLANTS.

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In Support of Appellants' Second Amended Bill of Complaint, Objections to All Motions for Summary Judgment and Dismissal Made by Defendants and Appellees, and Transcript of Record on Appeal Hereof.

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WILLIAM D. NOLAND, Trustee,  
and

WILLIAM D. NOLAND, Personal,  
2030 Wilshire Boulevard, Los Angeles 5,  
*In Propria Persona.*



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HARRY C. WESTOVER, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; GEORGE D. MARTIN, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; NORMAN HAYWARD, Internal Revenue Agent, Los Angeles, California; RAYMOND B. SULLIVAN, Acting Internal Revenue Agent, Los Angeles, California; and JOHN H. CRAMER, Internal Revenue Agent, Los Angeles, California,

*Appellees.*

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## BRIEF OF APPELLANTS.

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### Statement of the Case.

The matter hereof before the above entitled Appellate Court is an appeal from a Summary Judgment and Dismissal of Second Amended Bill of Complaint in favor of Defendant and Appellee Harry C. Westover, and a Summary Judgment and Dismissal of Second Amended Bill of Complaint in favor of Defendants and Appellees, George D. Martin, Norman Hayward, Raymond B. Sullivan, and John H. Cramer [Tr. of Record pp. 81 to 85, incl.], said Summary Judgments and Judgments of Dismissal of said Second Amended Bill of Complaint made and entered by the District Court of the United States,



Southern District of California, Central Division, on April 21st, 1948, the Honorable Charles C. Cavanah, presiding as the Judge of the said District Court of the United States, hearing motions for said judgments on March 30, 1948.

The controversy in the action in the District Court below, arose over a disagreement between the complainants and defendants as to which Federal Internal Revenue Statute governed the payment of income taxes; the defendants claimed that the complainants were governed by a situation created and established by defendant Norman Hayward, Internal Revenue Agent [Tr. of Record par. 4, pp. 15 and 16, par. 5, and 6, pp. 16 to 18, incl.] and the said defendant Norman Hayward transferred from the assets, funds and property belonging to Dr. William D. Noland Trust Estate, Ltd., a Benevolent Trust Estate, a charitable organization, one third of the assets, funds and property of said charitable organization to the personal account of William D. Noland personally, and charged income taxes against William D. Noland personally, the said Norman Hayward made the said transfers from the said charitable organization to William D. Noland personally, without any consent from the board of trustees for said charitable organization or from William D. Noland personally to make such tax charges against him personally, and then the defendants herein in the District Court below and appellees in above entitled Appellate Court, followed the activities of said Norman Hayward, by piling up more and more taxes against the said charitable organization, and against the said William D. Noland personally, and cited Section 167 of the Internal Revenue Code in support of their taking assets, funds and property from the said charitable organization and charg-



ing same to the personal account of William D. Noland and charging him with more income taxes [Tr. of Record p. 53], said defendants cite "Sec. 167 of the Federal Internal Revenue Code where the trustee and trustor and the beneficiary are the same the income is taxable to the Trustor"; the said Sec. 167 does not apply to the case at all, because the said charitable organization is composed of a board of trustees and there are numerous beneficiaries [Tr. of Record, Ex. A, pp. 36 to 49, incl.] and the method of taxation adopted as alleged in the Second Amended Bill of Complaint [Tr. of Record pp. 13 to 35, incl.] are very clearly shown that the policy of taking assets, funds and property from the said charitable organization and charging same to the personal account of William D. Noland for additional income taxation, such as was created and established by the said Norman Hayward when he went over the trustees books and records by threats and force without permission of the trustees, thus was unlawful income taxation charged to said William D. Noland personally [Tr. of Record, Ex. E, pp. 51 to 57, incl.] and Appellants contend that the laws that do govern and rule, in the operations of aforesaid benevolent trust estate and charitable organization [Tr. of Record par. 24, pp. 30 to 31, incl.] and [Tr. of Record par. 5, p. 34] which said laws provide under Title 26, Internal Revenue Code (Federal), Section 23, Subdivision (a), Paragraph (1), which provides that expenses in general may be deducted from gross income, and under said Title 26, Internal Revenue Code, Section 23, Subdivision (o) Paragraph (2), which provides for charitable and other contributions and charitable organizations, the unlimited deductions may be made for charitable and other contributions, and under said Title 26, Federal Internal Revenue Code, Section 120, it provides, in the case of an individual (Wil-

liam D. Noland, personal is an individual) if in the taxable year and in each ten preceding taxable years the amount of the contributions or gifts described in section 23 (o) (or corresponding provisions of prior revenue Acts) plus the amount of income, war-profits, or excess-profits taxes paid during such year in respect of preceding taxable years, exceeds 90 per centum of the taxpayers net income for each such year, as computed without the benefit of the applicable subsection, then the 15 per centum limit imposed by section 23 (o) shall not be applicable (53 Stat. 56). Thus, the appellants contend that said sections 23 and 120 as cited are the rules and laws that govern the appellants in the operations of aforesaid charitable affairs and that aforesaid Section 167 of Federal Internal Revenue Code, as cited by defendants does not apply to the matters involved in this action hereof on appeal before the above entitled Circuit Court of Appeals for the Ninth Circuit.

### Jurisdiction.

The jurisdiction of the United States District Court, Southern District of California, Central Division, is well established by the aforesaid statutes which are involved in the matter hereof, and for further jurisdiction in said District Court below, it provides under Title 28, Judicial Code and Judiciary, Section 41. (Judicial Code, Section 24.) Original Jurisdiction. The District Courts shall have original jurisdiction as follows: (5) Cases under internal revenue, customs, and tonnage laws. Fifth. Of all cases arising under any law providing for internal revenue, etc., and jurisdiction in the above entitled United States Circuit Court of Appeals for the Ninth Circuit for this appeal is provided under Title 28, Judicial Code and Judiciary, Section 225. (Judicial Code, Section 128.)

Appellate jurisdiction—(a) Review of final decisions. The Circuit Courts of Appeals shall have appellate jurisdiction to review by appeal final decisions—First. In the District Courts, in all cases save where a direct review of the decision may be had in the Supreme Court, and: Fifth. (d) Circuits in which reviews shall be had. The decisions of a District Court of the United States within a State in the Circuit Court of Appeals for the circuit embracing such State, therefore, appellants contend that the said District Court below had jurisdiction and that the above entitled United States Circuit Court of Appeals, for the Ninth Circuit, have jurisdiction to review the matter hereof on appeal from the United States District Court, Southern District of California, Central Division.

### **Concise Abstract of the Case.**

Pursuant to the matters and proceedings set forth in the preceding statement of the case hereof, counsel for defendants files and serves Motion to Dismiss [Tr. of Record pp. 2 to 7, incl.] and Affidavit in Support of Motion to Dismiss [Tr. of Record p. 8], and complainants file and serve, Objection to said Motion to Dismiss [Tr. of Record p. 9], and Exhibit A in support of said Objection to Motion to Dismiss [Tr. of Record pp. 10 to 13, incl.].

Counsel for defendants file and serve, Notice of Motion, Motion by Defendant Harry C. Westover for Summary Judgment, Affidavit in Support of Motion by Harry C. Westover for Summary Judgment, Motion by Defendants other than Harry C. Westover for Summary Judgment, and Affidavits in Support of Motion by Defendants other than Harry C. Westover for Summary Judgment [Tr. of Record pp. 57 to 78, incl.], and complainants file and serve Objection to Motion by Defendant Harry C. West-

over for Summary Judgment, and Objection to Motion by Defendants other than Harry C. Westover for Summary Judgment [Tr. of Record pp. 78 to 80, incl.].

Complainants file and serve in Case No. 7315-O'C, a Motion to Amend Complaint [Tr. of Record pp. 85 to 86, incl.]; Complaint in Cause No. 5716-W [Tr. of Record pp. 98 to 115, incl.]. And Order and Judgment of Dismissal as to Defendant Joseph D. Nunan, Jr., and Order and Judgment of Dismissal as to Defendants George D. Martin, Norman Hayward, Raymond B. Sullivan, and John H. Cramer, Internal Revenue Agents, are filed [Tr. of Record pp. 115 to 120, incl.], in aforesaid case and Cause No. 5716-W. Second Amended Complaint filed April 19, 1948 [Tr. of Record pp. 13-34].

Complainants file an application in form of Affidavit in Support of Extension of Time on Appeal, which is granted by an Order Extending Time of Appeal [Tr. of Record pp. 120 to 122, incl.], and file statement of points (DC) [Tr. of Record pp. 122-124] and statement of points (USCA) [Tr. of Record pp. 196-202].

On March 30, 1948, a hearing was held on the foregoing motions and objections before the Honorable Charles C. Cavanah, Judge of District Court below, and minute order of said Court [Tr. of Record pp. 86 to 89, incl.] shows that Court orders said motions for Summary Judgment by defendants stand submitted pending further order of the Court, and Docket Entries [Tr. of Record pp. 89 to 91, incl.] show what was filed from 3/19/48 to 5/4/48 in said docket.



During the hearing and proceedings of March 30, 1948, Mr. Oakes, presented and argued the motions of the defendants as their counsel, laying great stress on summary judgment, on the ground of *stare decisis*, and dismissal for defendant Harry C. Westover, Collector, and likewise laying great stress on summary judgment, and dismissal for defendants other than defendant Harry C. Westover [Tr. of Record pp. 129 to 149, incl.], and Dr. Noland (William D. Noland) for himself as Trustee and Personal, presented and argued in opposition to counsel for the defendants, upon the grounds that not one authority cited applied to this situation wherein a charitable organization was involved, and that the main issue of wherein Section 167 of the Federal Internal Revenue Code was cited by them in support of the unlawful activities of aforesaid Internal Revenue Agents as set forth was evaded and not dwelled upon by going into other technical matters [Tr. of Record pp. 149 to 173, incl.] which the record clearly shows, and when Dr. Noland finished his argument in opposition to defense counsel's presentation and argument; Mr. Oakes, counsel for defendants, again argued [Tr. of Record pp. 173 to 179, incl.] and as it was 12:00 noon a recess was taken until two o'clock. And upon return after the recess at two o'clock, Dr. Noland again argued against the presentation and argument of Mr. Oakes, counsel for defendants [Tr. of Record pp. 179 to 185, incl.], also showing that the controversy was still going on by demands being made by said Internal Revenue Agents and contending that his action was

in order, and the Court granted leave to complainants to amend bill of complaint.

Mr. Oakes, counsel for the defendants, again argued for the defendants [Tr. of Record pp. 186 to 188, incl.] and upon the closing of Mr. Oakes argument, the Court allowed the motions of the defendants for summary judgment and dismissal to lay on the files against the unwritten amended bill of complaint, as the Court formerly in the proceedings had granted leave to amend the bill of complaint, there are two defendants motions for summary judgment and dismissal [Tr. of Record pp. 58 to 73, incl.], and the Court took the matter under submission.

### Court in Error.

And under date of April 19, 1948, the District Court made a written opinion of the matter, Case No. 7315-O'C, in which written opinion there is an error on the part of the District Court, because in the Court's reference to Case No. 5716-W, both said cases in the District Court below, at page 191, Tr. of Record par. Sixth, it reads, as follows (in Court's written opinion):

“Sixth, that plaintiff be given \$50.00 damages for fraud as a result of wrongful transfer effected by defendants, and mental anguish, *et cetera*, caused thereby.”

Instead it properly should read, as follows (Case No. 5716-W):

“6. That the complainants be awarded and given judgment in the sum of Fifty Thousand Dollars (\$50,000.00) as compensated damages against the



aforesaid defendants and each of them for fraudulently taking the trustees' books and records and making fraudulent confiscations, assignments, transfers and deliveries from said records and books, and also likewise from income tax returns made by complainants to aforesaid Internal Revenue Service, from the aforesaid benevolent trust estate to William D. Noland personal account for additional taxes, and for causing to complainants endless mental anguish, molestation, annoyance, harassment, persecution, damages, losses and injuries since July 6, 1942, and continuously, including the present time." [Tr. of Record par. 6, pp. 113 to 114, incl.]

This said paragraph 6, shows that the Case No. 5716-W in District Court below was an individual action against the defendant Internal Revenue Agents individually, and not the U. S. Government, and the said Case No. 7315-O'C is an action against the said Government, therefore a *res adjudicata* will not lawfully lie on the files in support of aforesaid two motions by defendants for summary judgments and dismissal [Tr. of Record p. 132; third par., p. 187, and first par., p. 190], and pleading *res adjudicata* from an action against individuals will not stand in a case against the United States Government, it is an action against different parties, regardless of the contents of the bill of complaint.

On April 21, 1948, the District Court below made and entered a summary judgment and dismissal in favor of defendant Harry C. Westover, and on April 21, 1948, the District Court below made and entered a summary judgment and dismissal in favor of defendants George D. Martin, Norman Hayward, Raymond B. Sullivan and John H. Cramer [Tr. of Record pp. 81 to 85, incl.].

## Specification of Errors.

### I.

The Court erred in making the order and decree for summary judgment and dismissal on April 21, 1948, in favor of defendant Harry C. Westover, in sustaining a motion for said judgment by said defendant to lay on files against an unwritten amended complaint after the Court had granted leave to amend the bill of complaint.

### II.

The Court erred in making the order and decree for summary judgment and dismissal on April 21, 1948, in favor of defendant Harry C. Westover, in sustaining a motion for said judgment by said defendant upon the ground of *stare decisis*.

### III.

The Court erred in making the order and decree for summary judgment and dismissal on April 21, 1948, in favor of defendant Harry C. Westover, in sustaining a motion for said judgment by said defendant upon the ground that the present defendant and Collector cannot be held liable for acts before he commenced his duties, said defendant is not sued personally, only as U. S. Agent.

### IV.

The Court erred in making the order and decree for summary judgment and dismissal on April 21, 1948, in favor of the aforesaid defendants other than defendant Harry C. Westover, upon the ground and principle of *res adjudicata*.

### V.

The Court erred in making the order and decree for summary judgment and dismissal on April 21, 1948, in

favor of aforesaid defendants other than defendant Harry C. Westover, upon the ground that the instant Case No. 7315-O'C is the same as Case No. 5716-W.

## VI.

The Court erred in making the order and decree for summary judgment and dismissal on April 21, 1948, in favor of aforesaid defendants other than defendant Harry C. Westover, upon the ground that complainants are not entitled to relief.

## VII.

The Court erred in making the order and decree for summary judgment and dismissal on April 21, 1948, in favor of aforesaid defendants other than defendant Harry C. Westover, in sustaining a motion for said judgment by said defendants to lay on files against an unwritten amended complaint after the Court had granted leave to amend the bill of complaint.

The said specifications of errors, numbered I to VII inclusive, are based and founded upon appellants' statement of points on appeal [Tr. of Record pp. 196-202], and upon statements in the Reporter's Transcript of Proceedings under date of April 19, 1948, wherein the Court said:

"The Court: I want to dispose of a matter that has been submitted for decision. It is case No. 7315, Noland and others against the Collector of Internal Revenue and certain agents of the Government.

"The case is before the court on motions for summary judgments of the defendant and the dismissal of the action on the ground, first, that the complainants are precluded from bringing the instant action against defendants on the principle of *res adjudicata*

as the complainants are the same complainants who brought the action in this court in Case No. 5716-W on January 9, 1947, in which the action was dismissed and was a case where the complainants sought relief of a refund of the same tax payments as are included in the instant case, and a prayer for relief in the former action which related to the instant subject matter.

“That case was first brought by William D. Noland, H. K. Miller, and Harry R. Maxwell, Trustees of the Dr. William D. Noland Trust Estate, Limited, a benevolent trust estate, and William D. Noland versus George D. Martin, Internal Revenue Agent, and other agents.

“The complaint was filed on August 26th, 1946, and judgment of dismissal was signed on January 9, 1947.” [Tr. of Record pp. 189-190.]

And in the said proceedings, the Court further said:

The instant action was filed on July 7, 1947.

The amended complaint is brought by the same parties plaintiff and the same parties defendant with two exceptions. The defendant Nunan is omitted and the defendant Harry C. Westover, Collector of Internal Revenue, has been added.

The Court granted a motion permitting the eliminating and adding of these names.

The prayer of the amended complaint in the instant action is as follows:

“First, that Section 167 of the Federal Internal Revenue Code does not apply to the aforesaid benevolent trust estate, namely Dr. William D. Noland Trust Estate, Limited, and that any attempt to apply

or make application of said Section 167 to said benevolent trust estate is null and void and of no effect whatsoever.

Second, that as a benevolent trust estate the trustees do not have to file an income tax return and that no taxes are due.

Third, that since William D. Noland personally has contracted to give his personal services to the trust estate without profit that the trust estate is properly paying the living expenses of Dr. Noland and that Dr. Noland owes no taxes.

Fourth, that all monies paid by defendants be refunded with interest.

This contention of the defendants is sustained by the record in both cases." [Tr. of Record p. 192.]

### **Court Is in Error.**

In the Transcript of the Record at page 192, the Court is in error, because the Court granted an application to amend the bill of complaint [Tr. of Record p. 185, last 3 pars.] which reads, as follows:

"The Court: You need not read all of them. I will have to check into them.

Dr. Noland: Your Honor, my contention is that my suit is in order. Opposing counsel contends that the statutory limitation invoked in this case . . . I think your Honor can see that this suit was filed before the three-year statutory limitation period. I was very careful in checking that before even I filed the suit. And I appreciate and beg this court to deny their motions and grant leave to amend.

The Court: They have conceded that you can have your amendment. That is all conceded."



Upon the leave to amend being granted by the Court, complainants amended the bill of complaint, and the bill was amended as "Second Amended Bill of Complaint" which was filed on April 19th, 1948, and under date of April 19th, 1948, in aforesaid proceedings, the Court erred in reading into the record the prayer of the first amended bill of complaint, which is hereinbefore repeated, whereas, the Court should have read into the record the prayer of the "Second Amended Bill of Complaint" which reads [Tr. of Record pp. 33-34] as follows:

"Wherefore, complainants pray for process and judgment as follows:

1. That Section 167 of the Federal Internal Revenue Code does not apply to the aforesaid benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Ltd., nor to the complainants, William D. Noland, Trustee, or William D. Noland personally, and that any attempt to apply or make such application of said Section 167, to said benevolent trust estate or complainants is null and void of such application and of no effect whatsoever.

2. That the complainant William D. Noland, Trustee, for aforesaid benevolent trust estate, does not have to file any income tax return and that the said complainants William D. Noland, Trustee, and William D. Noland personally, do not owe the Internal Revenue Service or its Agents any income taxes of any kind whatsoever.

3. That since William D. Noland personally has made and executed a contract with the trustees of aforesaid benevolent trust estate, as a charitable organization, to give his skill, knowledge and labor to the said benevolent trust estate and its trustees, for the benefit of the beneficiaries who are poor people



and children who are unable to pay for health service; without salary, wages or profit, and that said contract is a valid and lawful contract and that the complainant William D. Noland had a lawful right to make said contract, therefore, the said complainant does not owe any income taxes, as there is no income from salary, wages or profit from the said benevolent trust estate.

4. That complainant William D. Noland, Trustee, is a party to the contract under which the aforesaid benevolent trust estate is established and that it be adjudged and decreed that the said contract is a valid and lawful contract, and that the said benevolent trust estate is a charitable organization.

5. That it be adjudged and decreed that the matters which are involved herein, are subject to the provisions under Title 26, Internal Revenue Code, Section 23, Subdivision (a), Paragraph (1), Subdivision (o), Paragraph (2), and Section 120, as the law that governs and rules instead of Section 167 of the Federal Internal Revenue Code.

Wherefore, complainants pray for such other order, orders, aid and relief as the court may deem proper and just in the premises."

Dated: Los Angeles, California, April 15, 1948. Filed and served April 19, 1948.

Counsel for the defendants in argument for Summary Judgments [Tr. of Record p. 148], said:

"Then these Proposals to Amend also request the court to allow the prayer for relief to be changed. I think it is immaterial whether the prayer for relief is changed because there is no change in the facts alleged. So, if there is any amendment along this line

we would merely ask your Honor to have the motions for summary judgment filed against the amended complaint to also stand against the amended complaint as further amended by these proposals.

We don't think that the complaint is entitled to these additional amendments because he was allowed the privilege to amend his complaint once and these proposals come at a late date, after the case has been at issue for several months, in the sense that our motions have been pending. But if the complaint is to be granted the privilege of further amending we would merely request that our motion for summary judgment stand against the complaint as still further amended."

Complainant William D. Noland objected to the motions for summary judgments and to standing on files against unwritten amended complaint to be amended [Tr. of Record p. 149], by replying:

"Dr. Noland: Your Honor, I object to the motion of the defendant for *res adjudicata* in its entirety. I also object to all the motions in their entirety upon the ground that there is not one citation in point.

All of their citations are pertaining to corporations or individuals. Not one citation pertains to a charitable organization or institution of any kind. Therefore, I feel that their motions should be denied.

That this Honorable Court may better understand the position which I take here, it is true I am not a lawyer. I am a layman. I am not representing the Trust. The Trust is not a complainant. I am not representing the other Trustees. I am not representing anyone or anything except my personal interests as William D. Noland, Trustee, under the contract, and William D. Noland personally."

The Court allowed the said motions for summary judgments to stand against the unwritten complaint to be amended, which the Court granted leave to amend, and the bill was amended and filed as the "Second Amended Bill of Complaint," and the Court sustained said motions for summary judgments, dismissing Second Amended Bill.

### Summary.

On June 1, 1935, the Benevolent Trust Estate, namely Dr. William D. Noland Trust Estate, Ltd., was organized and started doing business as a charitable organization, as time passed, some of the original trustees resigned and other trustees were elected in their place and stead, and the charitable work of the said charitable organization is caring for and restoring health for poor people and children who are afflicted with illness, who have no funds with which to pay for such service, and no way of obtaining such service for their recovery to good health.

On or about July 2, 1942, one of the Federal Internal Revenue Agents called at the headquarters of the aforesaid charitable organization, and demanded by threats of arrest that he be given the trustees books and records, which was done and the said Revenue Agent then examined the said books and records, and set out one-third of the amounts as shown on the books and records, charged the said one-third of amounts to the personal account of William D. Noland, personally, and charged income taxes against the said William D. Noland based upon the amounts the said Revenue Agent had taken from the

trustees books and records and the said Revenue Agent did not have permission of the said trustees to do any of the things he did.

Following the charging of the aforesaid amounts to William D. Noland personal account for income taxation, demands were made continuously for the payment of said charges for income taxation, and as demands were made from time to time, the amounts demanded each time increased into such large amounts, that it would be impossible for either the aforesaid charitable organization or William D. Noland personally to pay such large demands as were made by the Internal Revenue Agents, and finally in the hope of settling the controversy, complainants filed a law suit for the purpose of getting the controversy and matters hereof settled and determined.

The contract under which the aforesaid charitable organization is established [Tr. of Record p. 36], is a document under the provisions of the Constitution of the United States of America, and defendants claim it is ruled by Section 167 of Federal Internal Revenue Code [Tr. of Record par. 3, p. 53], and complainants claim that the said charitable organization is ruled by and under the provisions of Title 26, Internal Revenue Code, Section 23, subdivision (a), paragraph (1), subdivision (o), paragraph (2), and Section 120 [Tr. of Record par. 5, p. 34].

Thus, briefly is the controversy in this matter, if it were possible to determine which are the rules that govern, this controversy would be settled, and the Federal Internal Revenue Codes cited read as follows:

Defendants cite at [Tr. of Record p. 53] as follows (Sec. 167, Internal Revenue Code):

Name: WILLIAM D. NOLAND. Year: 1942

Net income disclosed by return Form 1041 No. 1453688 \$287.63.

Add: The detail of income and expenses is shown on the next sheet attached.

*Under Sec. 167 of the Internal Revenue Code where the trustee and trustor and the beneficiary are one and the same the income is taxable to the Trustor . . . 3,935.47. (Italics are complainants.)*

Complainants cite Title 26, Internal Revenue Code, Section 23, subdivision (a), paragraph (1), which reads as follows (a) Expenses. (1) In general:

“All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.”

And subdivision (o), paragraph (2), of said Title 26, Section 23, reads as follows (o) Charitable and other contributions:

“(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the



United States or of any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which enures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.”

And Section 120 of aforesaid Title 26, reads as follows:

“Sec. 120. Unlimited deductions for charitable and other contributions.

In the case of an individual if in the taxable year and in each of the ten preceding taxable years the amount of the contributions or gifts described in section 23 (o) (or corresponding provisions of prior revenue Acts) plus the amount of the income, war-profits, or excess-profits taxes paid during such year in respect of preceding taxable years, exceeds 90 per centum of the taxpayer's net income for each such year, as computed without the benefit of the applicable subsection, then the 15 per centum limit imposed by section 23(o) shall not be applicable. (53 Stat. 56.)

Thus are the federal internal revenue statutes under which complainants contend that the aforesaid charitable organization is ruled and governed and not by aforesaid Sec. 167 of federal internal revenue code as claimed by the defendants.”



## ARGUMENT.

### Points and Authorities.

The charitable organization hereof is established by a contract under the provisions of the Constitution of the United States of America [Tr. of Record pp. 36-49], as a benevolent trust estate, dated June 1, 1935, and recorded in Maricopa County, State of Arizona, on June 8, 1935, with a branch office at Suite 201-205, 2030 Wilshire Boulevard, Los Angeles 5, California.

The title of the contract and document under which the said benevolent trust estate is organized reads as follows:

“Contract and agreement embodying the following terms, conditions, stipulations, Acceptance and covenants to establish a benevolent trust estate to be administered by natural person trustees in joint tenancy, holding in trust as to distribution of avails, acting under citizenship, common law rights of contract, and constitutional rights, federal laws and Immunities vouchsafed to all person, as set forth and provided in and by the Constitution of the United States of America.” [Tr. of Record, p. 36.]

And the said contract was written by the late Franklin P. Bull, who had practiced law in the State of California for over 50 years, and he was commonly known as Judge Bull.

1.

The right to create and establish a trust estate has always been recognized in all history of law in the United States and England, beginning with the reign of Henry VIII of England, in the year of A. D. 1536, and up to and including the present time, in the sustaining of common law rights of contract, citizenship and property rights:

Statute of Uses, England 27, Henry VIII, chap. 10, A. D. 1536.

And the aforesaid benevolent trust estate is established by contract, and the impairment of obligation of contract is prohibited by the Constitution of the United States, as it provides as follows:

Article I, Section 9, Clause 3, provides:

“No Bill of Attainder or *ex post facto* law shall be passed.”

Section 10, Clause 1, provides:

“No State shall . . . Pass any Bill of Attainder, *ex post facto* law, or law impairing the obligation of contract.”

Courts usually regard the rights of citizens to contract and are not unmindful that “public policy requires . . . that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily, shall be held sacred and shall be enforced by the courts of justice,” and that this freedom of contracts is not to be interfered with lightly:

*Dufford v. Nowakoski* (Rafferty, J.), 125 N. J. Eq. 262, 4 A.

2.

A Court ruling of vast importance to complainants hereof and the matters involved in this action; is wherein Federal Justice Gresham upheld the right of complainants, when he said in case (27 Fed. 149):

“A citizen of the United States cannot be denied the right to take and hold absolutely in trust, real and personal property in any State in the Union, nor can he be denied the right to accept conveyance in trust for his sole benefit or for the benefit of himself and others. This Right is incident to National Citizenship.”

Complainants have been denied the said right, which is clearly shown in the Second Amended Bill of Complaint in the Transcript of the Record hereof [Tr. of Record pp. 13-34], and thereby complainants have been denied of their property and civil rights, and a civil right of any precuniary nature or character is a property right and a Court will concern itself in protecting such right:

*Re Sawyer*, 124 U. S. 200, 210 (8 Sup. Ct. 482), 31 L. Ed. 402, 409, and the Court will support the trustees in carrying out the terms of their trust estate contract and agreement:

*Clews v. Jamison*, 182 U. S. 461 (21 Sup. Ct. 845), 45 L. Ed. 1185.

3.

The aforesaid benevolent trust estate [Tr. of Record pp. 36-49] is established by a contract, and the impairment of the obligation of contract, is prohibited by the Constitution of the United States of America:

Article 1, Sec. 9, Clause 3, Const. U. S. A.

The said clause 3, provides:

“No Bill of Attainder or *ex post facto* law shall be passed.”

A Bill of Attainder is a legislative Act which inflicts punishment without a judicial trial. The term embraces bills of pains and penalties, and legislation is none the less objectionable in that it merely confiscates property; it may affect the life of an individual, or confiscate his property, or both. The framers of the Constitution must be deemed to have had in mind the meaning commonly given to the term “bill of attainder” at that time:

*Fletcher v. Peck*, 6 Cranch 138;

*Dreham v. Stifle*, 8 Wall. 601.

The object of the aforesaid Clause 3, is to secure the rights of citizens against deprivation by legislative enactment in any form whatsoever or however disguised, and laws operating to exclude a citizen from any profession or avocation for the past conduct are objectionable as bills of pains and penalties and are prohibited by this said clause:

*Cummings v. Missouri*, 4 Wall. 277, 323;

*Ex parte Garland*, 4 Wall. 377,

and in an outstanding case (*Marbury v. Madison*, Cranch 1, U. S. Rep. 5), the court said (at page 58):

“The very essence of Civil Liberty certainly consists in the right of every individual to claim the protection of the law, whenever he receives an injury, one of the first duties of Government is to afford that protection.”

The Constitution of the United States provides that protection.

4.

Aforesaid benevolent trust estate is established by contract and impairment of obligation of contract is further prohibited:

Article 1, Sec. 10, Clause 1, Const. U. S. A.,  
which provides:

“No state shall . . . pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, . . .”

By obligation of the contract is meant the means which at the time of its creation, the law affords for its enforcement:

*Nelson v. St. Martin's Parish*, 111 U. S. 720;

*Walker v. Whitehead*, 16 Wall. 314.

In *Edwards v. Kearzey* (96 U. S. 600), the Court said:

“The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it the contract, as such, in the view of the law ceases to be and falls into the class of those imperfect obligations, as they are termed, which depend for their fulfillment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable.”

In *Farrington v. Tennessee* (95 U. S. 683), the Court said:

“the amount of the impairment of the obligation is immaterial. If there be any, it is sufficient to bring into activity the constitutional provision and the judicial power of the court to redress the wrong.”

And the Court held likewise in cases as follows:

*Planters Bank v. Sharp*, 6 How. 327;

*Green v. Biddle*, 8 Wheat. 84.

And in the case of *Sturgis v. Crowninshield* (4 Wheat. 197), the Court said:

“Under the Constitution the obligation of a contract is not to be impaired at all. It is not a question of degree, manner, or cause, but of encroaching in any respect on its obligation—dispensing with any part of its force; and any deviation by postponement or acceleration of the period of performance, or imposing conditions not expressed, or dispensing with those expressed, is a violation of the obligation. The slightest variation of the obligation impairs it to that extent and is unconstitutional.”

## 5.

Another violation of the constitutional rights of complainants which clearly shows in the Second Amended Bill of Complaint is that complainants have been deprived of their lawful rights and that their citizenship rights have been unlawfully abridged by the aforesaid Internal Revenue Agents by unlawful transfers and deliveries of the assets, funds and property belonging to the aforesaid benevolent trust estate to the personal account of William D. Noland [Tr. of Record pp. 51-57], which were made by the said Internal Revenue Agents, then brought additional income taxes against William D. Noland, personally, which said unlawful transfers and deliveries of said properties by the said Internal Revenue



Agents are prohibited by the Constitution of the United States:

Article XIV (14th Amendment), Const. U. S. A., which provides:

“Clause 1. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

Complainants contend they have been denied equal protection of laws.

6.

The “property” protected by the Fourteenth Amendment includes not only the thing owned but the right to acquire, use and dispose of it, and it has been so held:

*Buchanan v. Warley*, 245 U. S. 60,

and freedom to contract for personal services is a right which is protected by (Clause 1, of the Fourteenth Amendment of the Constitution, U. S. A.) the Supreme law of the land, and it has been so held:

*Prudential Ins. Co. v. Cheek*, 259 U. S. 530,

and it has been held, that property is land, goods, a business, *skill*, reputation, and whatever may have the effect of destroying property in those things even to a man's good name is destruction of property and a cause for action:

*Dixon v. Holden*, L. R. 7 Eq. 488, 492 (per Malins, V. C.),

and the right of a citizen to pursue any calling, business or profession he may choose is held to be a property right within the protection of the Court:

*New Method Laundry Co. v. MacCann*, 174 Cal. 26, 161 Pac. 990 Ann. Cas. 1918C, 1022.

And complainant William D. Noland, personally, contracted with the trustees for the aforesaid benevolent trust estate, a charitable organization, to give his services for the benefit of the beneficiaries, who are poor people and children, without salary, wages or profits, and the said charitable organization to pay his living expenses as an expense to said charitable organization, which said complainant contends that he has a lawful right to do such, as it is so provided in the Constitution of the United States as heretofore cited, and also have cited hereinbefore several outstanding Court rulings which provides likewise supported by the Constitution of the United States, therefore, the aforesaid Internal Revenue Agents in transferring and delivering the assets, funds and property belonging to the said benevolent trust estate, from said charitable organization and estate, to the account of William D. Noland personally, and taxing the said William D. Noland for income tax on said assets, funds and property belonging to the said charitable organization, the said Internal Revenue Agents have violated the provisions herein cited of the Constitution of the United States and the constitutional law and rulings of all the points and authorities herein cited of the Supreme Court and other Courts, which said rulings of said Supreme Court and other Courts are supported by the Constitution of the United States, and the District Court below in the errors herein cited and set forth have likewise violated said provisions herein cited of the Constitution of the United

States, constitutional law and rulings of the Supreme Court and other Courts, in the sustaining of the aforesaid motions for summary judgments made by the defendants, by granting and issuing summary judgments and dismissals of Second Amended Bill of Complaint on April 21, 1948.

7.

A right of action which springs from a contract is property within the protection of the Fourteenth Amendment of the Constitution; and it has been so held:

*Lamb v. Powder River, etc. Co.*, 132 Fed. 434;

*Forbes Pioneer Boat Line v. Board of Comrs.*, 258 U. S. 338.

Aforesaid benevolent trust estate is established by a contract, organized under the common law rights of contract, which is a law that is binding, because of the immemorial usage and universal reception:

*Elliot v. Freeman*, 220 U. S. 178.

8.

The aforesaid Internal Revenue Agent, Norman Hayward, defendant, by and through threats of warrants for arrest of aforesaid William D. Noland, complainant, the aforesaid trustees books and records were given to the said Internal Revenue Agent, Norman Hayward, defendant, who then reviewed the said trustees books and records, and after reviewing same, unlawfully confiscated, transferred and delivered assets, funds and property belonging to the aforesaid charitable organization to the personal account of William D. Noland personally, and then made taxes from said assets, funds and property against the said William D. Noland personally, and such acts as com-

mitted herein by the said Norman Hayward defendant, are prohibited:

Fourth Amendment to Constitution, U. S. A.,  
which said Amendment provides:

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

And in a leading case (*Boyd v. United States*, 116 U. S. 616) it was held that a compulsory production of private papers to be used as evidence against the owner, is unreasonable search and seizure within this amendment (Fourth Amendment, Constitution U. S. A.), and that an Act of Congress which requires a party to produce his private books and papers, and if he refuses to do so upon demand, permits the Government to assume as true its allegations as to the contents of said books and papers, it is unconstitutional.

This protection reaches all alike, whether accused of a crime or not, and the duty of giving it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws . . . which are charged at all times with the support of the Constitution and to which people of all conditions have a right to appeal for maintenance of such fundamental rights:

*Weeks v. United States*, 232 U. S. 392;

Article IV, Sec. 1, Const. U. S. A. (Full Faith and Credit Clause).

9.

The importance of the Constitution of the United States is not only important to the people, but also to the United States Government as well, and so held by the Supreme Court:

*Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 9.

Constitutional law is the recognized law of the land:

*Smyth v. Ames*, 169 U. S. 466.

The regulation of power is governed and regulated by common law, and it has been so held:

*Munn v. Illinois*, 94 U. S. 113,

and unjust discrimination is forbidden:

*Wight v. United States*, 176 U. S. 512,

and Courts concern themselves in the maintenance of civil rights:

*Taylor v. Kercheval*, 82 Fed. 497,

and unlawful injury to business or property, or to take away property without due process of law, is a property right that is actionable:

12 C. J. 589, Sec. 114, and cases there cited.

10.

The defendant Harry C. Westover, Collector, is not named individually, the office he occupies is a Government Office, which said office is named, and in order to name that office, as a defendant, it is necessary to name the party who is in charge of said office, therefore, the said office is an agency of the Government, this action is not a personal affair with the said defendant, merely an agency



matter, and under the law of agency, the said Harry C. Westover is a proper party defendant; because the said defendant is a representative of the United States Government, which is an agency and an agent (Story on Agency, Section 3; and Black's Law Dict. 937), and said defendant cannot deny his agency under the law of agency to the injury and prejudice of complainants and appellants hereof (20 Mo. App. 577).

11.

The aforesaid errors of the District Court below as set forth and herein before specified, as shown in the record hereof on appeal, that the said District Court on March 30, 1948, allowed a motion for summary judgment and dismissal made by defendant Harry C. Westover, to lay on the files against an unwritten second amended bill of complaint, said motion supported by a claim of no responsibility for said defendant, and the said District Court allowed a motion for summary judgment and dismissal to lay on the files against an unwritten second amended bill of complaint, after the said Court had given permission to amend said bill of complaint, and the said District Court on April 21, 1948, made and entered a summary judgment and dismissal against second amended bill of complaint in favor of said defendant Harry C. Westover.

And the District Court below, as shown in errors in the record hereof, further on March 30, 1948, allowed a motion for summary judgment and dismissal made by the defendant internal revenue agents other than the defendant Harry C. Westover, to lay on the files against an unwritten second amended bill of complaint, said motion supported by *res adjudicata* and no responsibility for said defendant internal revenue agents, after the said Court had given permission to amend said bill of complaint, and

the said District Court on April 21, 1948, made and entered a summary judgment and dismissal against second amended bill of complaint in favor of said defendant internal revenue agents, therefore, the sustaining of the said motions for summary judgment and dismissal are in error and a denial of constitutional rights and due process of law to complainants, which said denial to complainants is supported by the Constitution of the United States, constitutional law and due process law herein cited within this brief and points and authorities hereof, and likewise the specification of errors, I to VII inclusive, are denials to complainants of their rights as afforded by said Constitution, constitutional law and due process law herein cited.

And on April 19, 1948, complainants filed and served Second Amended Bill of Complaint, which said District Court below had granted leave to do, on March 30, 1948, and on April 19, 1948, the said District Court had a proceeding and rendered the opinion of the said Court, reading into the record of said proceeding the prayer of the first amended complaint which was filed on July 7, 1947, in support of summary judgments and dismissals made by the said District Court and entered on April 21, 1948, in favor of aforesaid defendants; the Court is in error in not reading the prayer of second amended bill of complaint, which the said Court had granted leave to amend and file same, and said error by the said Court, is a denial of rights to complainants hereof afforded by the Constitution of the United States, constitutional law and due process law as cited in this brief and points and authorities herein, and the law further provides:

In the matter herein before the Court, the record shows, that complainants have been deprived of their constitu-

tional rights and due process of law, which is in violation of the rights afforded by the Constitution of the United States and Constitutional Law:

Article XIV (Fourteenth Amendment) Sec. 1,  
Constitution U. S. A., and

See:

Cooley's Constitutional Limitations, 4th Ed. 56  
(45).

And complainants hereof, William D. Noland, Trustee, and William D. Noland, personal, representing personal interests as two parties, and not being an attorney or lawyer who makes the practice of law a profession and business, the said complainants can make mistake of fact unintentional, and under such circumstances, it is not beyond the reach of the Court, to instruct for correction and grant relief, as complainants have no funds to employ counsel, and have to appear *in propria persona* in Court and prosecute this action to the best of complainants' ability:

*Swedesboro Loan, etc., Assoc. v. Gans*, 65 N. J.  
Eq. 132, 55 Atl. 82,

and a mistake at law is not beyond the reach of the Court for relief (6 Wheat. 174, 5 L. Ed. 589), and the Court will correct the mistake (*Hunt v. Adm'rs.*, 1 Pet. (U. S.) 13), and no one is allowed to enrich himself by a mistake at law or of fact:

*Benson v. Bunting*, 127 Cal. 532, 59 Pac. 991, 78  
Am. S. R. 81,

and the Court has power to correct what has been wrongfully done:

*Arkadelphia Mill Co. v. St. Louis So. Western*  
249 U. S. 134,

and the complaint alleges and shows fraud, that fraud has been used in transfers and deliveries of assets, funds and property, and the courts have jurisdiction to relieve in all cases of fraud:

*Tyler v. Savage*, 143 U. S. 79 (12 Sup. Ct. 340),  
36 L. Ed. 82.

It is the duty of a Federal Court to support every right guaranteed by the Federal and State Constitution:

*Snypp v. St. of Ohio*, 70 Fed. 2d 535,

and any law or procedure in its operation, denying or obstructing contract rights, impairs contract obligations:

*McCracken v. Hayward*, 2 How. 608;

*Smith v. Morse*, 2 Cal. 500.

Complainants contend that when the aforesaid defendant Norman Hayward by threats and duress procured the trustees records and books and examined said records and books and then transferred and delivered assets, funds and property, in the form of figures, to the personal account of William D. Noland personally from the aforesaid charitable organization and benevolent trust estate, it was an act of fraud on the part of said defendant, and any judgment obtained by fraud can be assailed, and the fact of being a party does not estop from relief against fraud:

*Johnson v. Waters*, 111 U. S. 640, 28 L. Ed. 547,  
556.

Courts are not at liberty to decide a cause contrary to the provisions of the Constitution of the United States. (See, Cooley's Constitutional Limitations, and cases cited, p. 159 *et seq.*)

### Conclusion.

Appellants respectfully submit the evidence in the Transcript of Record on appeal hereof, showing the proceedings and matters before the District Court below, all of which shows that appellants have been deprived of constitutional, property and personal rights without due process of law, as afforded by the Constitution of the United States.

Wherefore, this appeal is respectfully submitted, and appellants pray that the orders and judgments made and entered on April 21, 1948, in favor of all defendants, be reversed and remanded to the District Court below, for further hearing and proceedings subject to the prayer of the Second Amended Bill of Complaint [Tr. of Record pp. 33-34], which said Second Amended Bill has had no hearing before the District Court below, which is shown hereof.

Dated: Los Angeles, California, October 1, 1948.

Respectfully submitted,

WILLIAM D. NOLAND, Trustee,  
*In Propria Persona,*

WILLIAM D. NOLAND, Personal,  
*In Propria Persona.*